HB 442

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 442 (Delegate Robinson, *et al.*)
Appropriations

Volkswagen Settlement Funds - Use of Environmental Mitigation Trust

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This emergency bill establishes the Volkswagen Settlement Fund, administered jointly by the Maryland Department of the Environment (MDE) and the Maryland Energy Administration (MEA). The stated purpose of the fund is to receive revenue distributed to any unit of State government from the "Environmental Mitigation Trust," which is the fund established under the October 2016 Volkswagen settlement agreement to be used to mitigate excess nitrogen oxide (NOx) emissions. The fund may only be used for allowable purposes under the Environmental Mitigation Trust, and at least 15% of all revenue distributed to the fund must be used for the acquisition, installation, operation, and maintenance of light-duty electric vehicle infrastructure. In addition to the revenues received from the Environmental Mitigation Trust, any interest earnings of the fund are credited to the fund. Expenditures made from the fund may be made only in accordance with the State budget or budget amendment.

Fiscal Summary

State Effect: Because the bill does not directly affect the total amount of funds available to Maryland under the Volkswagen settlement, it is not anticipated to significantly affect overall State finances, as discussed below. MDE and MEA can administer the fund with existing budgeted resources.

Local Effect: Because the bill does not directly affect the total amount of funds available to Maryland under the Volkswagen settlement, it is not anticipated to significantly affect overall local finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Volkswagen Suit and Overview of Settlement Agreement

In June 2016, the Office of the Attorney General (OAG) announced a settlement that requires Volkswagen to pay more than $570.0 million for violating state laws prohibiting unfair or deceptive trade practices by marketing, selling, and leasing diesel vehicles equipped with illegal and undisclosed defeat device software. The settlement is part of a multistate and federal lawsuit.

OAG's investigation confirmed that Volkswagen sold more than 570,000 2.0- and 3.0-liter diesel vehicles in the United States equipped with "defeat device" software intended to circumvent applicable emissions standards for certain air pollutants, and actively concealed the existence of the defeat device from regulators and the public. Volkswagen made false statements to consumers in their marketing and advertising, misrepresenting the cars as environmentally friendly or "green" and that the cars were compliant with federal and state emissions standards, when, in fact, Volkswagen knew the vehicles emitted harmful NOx at rates many times higher than the law permitted. The settlement addresses both consumer and environmental harms as a result of the defeat device software.

Environmental Mitigation Trust

Under part of the environmental portion of the settlement, Volkswagen must pay $2.7 billion into an Environmental Mitigation Trust to support environmental programs throughout the country to reduce NOx emissions. This trust, also subject to court approval, is intended to mitigate the total lifetime excess NOx emissions from specified 2.0-liter diesel vehicles. Maryland is eligible initially to receive approximately $71.0 million in grants to fund mitigation projects.

Volkswagen also committed to a nationwide zero emissions vehicle (ZEV) technology investment of $2.0 billion. This commitment is to support programs and actions that increase the use of ZEV technology. Of the $2.0 billion, $1.2 billion is slated for distribution among the states and $800 million is slated to go to California.

Consumer Settlement Agreement

Under the related consumer portion of the settlement, Volkswagen must pay Maryland more than $15.0 million. This agreement is part of a series of state and federal settlements that will provide cash payments to affected consumers, require Volkswagen to buy back or modify certain VW and Audi 2.0-liter diesel vehicles, and prohibit Volkswagen from engaging in future unfair or deceptive acts and practices in connection with its dealings with consumers and regulators. This bill does not address the funds from the consumer portion of the settlement.

Administration of the Environmental Mitigation Trust

Overall control of the Environmental Mitigation Trust is the responsibility of an appointed trustee per the settlement agreement consent decree. However, the trustee has not yet been named and, as such, settlement funds are not yet available to beneficiaries. Within 60 days of the trust effective date, each eligible governmental identity must submit a form for the certification of beneficiary status and name the state agency that will serve as the beneficiary's lead agency. Only the designated lead agency may request funding from the trust and only a certain portion of the funding can be requested each year. Upon termination or completion of any eligible mitigation action, any unused funds must be returned to the trust and added back to the beneficiary's allocation. The bulk of funding from the trust terminates after 10 years.

The settlement agreement includes prescriptive eligible mitigation actions, which are listed in Appendix D-2 of the agreement. One such eligible mitigation action is funding for light-duty ZEV supply equipment. The settlement agreement specifies that each beneficiary may use *up to* 15% of its allocation for that purpose.

Disposition of Settlement Monies, Generally

Generally, under current law, any money received by the State as a result of a settlement, judgment, or consent decree must be deposited in the State treasury and expended only as authorized in the State budget bill (except for funds designated as restitution). These funds may be transferred by budget amendment.

State Fiscal Effect: Because the bill does not directly affect the total amount of funds available to Maryland under the Volkswagen settlement, it is not anticipated to significantly affect overall State finances. However, the exact impact of the bill with respect to how the settlement funds are spent is somewhat unclear. First, because the trustee has not yet been named, the exact timing and distribution of the settlement funds to Maryland are unknown. Second, because a lead agency in Maryland has not yet been named, it is unclear which agency or agencies would handle the administration of the funds under current law; the bill charges MDE and MEA to jointly do so. Third, the settlement agreement is very prescriptive with regard to the format of funding disbursements, so it is unclear if, in the absence of the bill, settlement funds would have been deposited into the general fund or directly into a special fund administered by the lead agency for specific mitigation projects.

Further, as stated in the settlement agreement, Maryland has "[no] rights or role with respect to the management or operation of the [environmental mitigation] trust, or the trustee's approval of requests for eligible mitigation action funding." Thus, in practice, funding for individual projects ultimately depends on approval from the trustee. The bill largely provides specificity for the administration and disbursement of the funds at the State level.

However, the Department of Legislative Services notes that the bill requires *at least* 15% of all revenue distributed to the fund to be used for the acquisition, installation, operation, and maintenance of light-duty electric vehicle infrastructure. The settlement agreement limits spending on light-duty ZEV supply equipment to up to 15% of a beneficiary's allocation. Although light-duty ZEV supply equipment includes light-duty electric vehicle infrastructure, it also includes a broader spectrum of projects and types of technology, such as hydrogen. Thus, the bill's language is more restrictive than the language of the settlement agreement. Both MDE and MEA advise that restricting the use of funds to one technology could limit which projects are funded under the settlement agreement and, possibly, result in a loss of funding under the settlement agreement, although this is unclear.

Small Business Effect: While the bill has no direct impact on the overall amount of funding that may be available to small businesses under the settlement agreement, small businesses that provide services specifically related to light-duty electric vehicle infrastructure benefit to the extent the bill directs more funding to those entities than they otherwise would have received. Small businesses that provide services related to other eligible mitigation projects may be negatively affected to the extent they receive less funding than they otherwise would have received. Again, the overall impact of the bill on the types of projects funded is unclear at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office; Maryland Department of the Environment; Maryland Energy Administration; Office of the Attorney General; Department of Legislative Services

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kb/lgc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510